**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL CASE No. 10 of 2002**
**In**
**COMPANY PETITION No. 6 of 2002**

**For Approval and Signature:**
**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**O.L.OF KWALITY ROLLER & BALL BEARING PVT. LTD. - Complainant(s)**
**Versus**
**MR.SANKARLAL KIRTILAL SHAH & 5 - Accused**

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**Appearance :**
OFFICIAL LIQUIDATOR for Complainant(s) : 1,MR ASIT B JOSHI for Complainant(s) : 1,
DELETED for Accused : 1, 5,
MR BD KARIA for Accused : 2 - 4.

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 06/02/2007**

**ORAL JUDGMENT**

1. Present Criminal Case has been filed by the Official Liquidator of Kwality Roller & Ball

Bearing Private Limited (in liquidation) under Section 454(5) of the Companies Act; 1956 to take cognizance of the default committed under Section 454(5) of the Act and to issue process against the accused Nos.1 to 5 to try and punish them in accordance with the provisions of law.

2. It is alleged in the complaint that pursuant to the order passed by this Court dated 8.5.2002 in Company Petition No. 6 of 2002, the Kwality Roller & Ball Bearing Private Limited was ordered to be wound up and on the relevant date, the accused Nos.1 to 5 were the directors of the subject company. It is further alleged that all the accused were served with the notice dated 17.6.2002 and were called upon to submit the Statement of Affairs as required under Section 454 of the Companies Act, however, still the Statement of Affairs were not filed and therefore, the present complaint has been filed.

3. It appears that the accused No.1 has expired on 20th May, 2001 and the accused No.5 has also

expired on 22nd March, 2001. A reply is filed on behalf of the accused No.2. It is submitted that he is the son of the original accused No.1 and brother of original accused No.5, who were managing the affairs of the company in liquidation and he was not involved in the affairs of the company at all. It is also further submitted that the accused No.3 is his mother and accused No.4 is his wife, who have also no knowledge of any affairs of the company and they were the directors of the company only on paper on the relevant date of appointment of the Official Liquidator. It is submitted that the Statement of Affairs have already been filed by him as on 21.4.2003 showing the position of the assets of the company in liquidation as on winding up order was passed. It is submitted that the said Statement of Affairs was filed even as per the available record and it is not possible for him to carry the matter further and to submit any further.

4. Shri Asit B. Joshi, learned advocate appearing

for the Official Liquidator – complainant has submitted that even the Statement of Affairs, which are filed by the accused No.2 are also defective and there is no explanation with regard to the cash of approximately Rs.19,82,000/-, which was mentioned in the balance sheet as on 31st March, 2001. he has also further submitted that there are other defects also in the Statement of Affairs, which are not cured and/or removed by the accused, who has submitted the Statement of Affairs. At this stage, Shri Karia, learned advocate appearing for the accused Nos.2, 3 and 4 has submitted that as they were not in active management of affairs of the company in liquidation at any point of time, it is not possible for them to reply to what has happened to the cash on hand of Rs.19,82,000/-, which was reflected in the books of the account as on 31st March, 2001 and to that extent, they plead guilty so far as defective Statement of Affairs is concerned and has requested to pass an appropriate order of imposing reasonable amount of penalty in the

facts and circumstances of the case. It is further submitted by him that whatever the position as on the date of the winding up order, the accused have submitted in the Statement of Affairs and beyond that, it is not possible for them to file any further Statement of Affairs and therefore, it is requested to pass an appropriate order.

5. Heard the learned advocates appearing for the respective parties.

6. It is required to be noted that the company in liquidation was ordered to be wound up by order dated 8.5.2002. As per the provisions of Section 454 of the Companies Act; 1956, all the directors, who are their on the relevant date, are required to file the Statement of Affairs in the prescribed form within a period of 21 days. It is not in dispute that the accused Nos.2 to 4 were also the directors of the company in liquidation on the relevant date. It is the case on behalf of the accused Nos.2 to 4 that the

accused Nos.1 and 5 were in active management of the affairs of the company in liquidation and accused Nos.2 to 4 have no knowledge with regard to the affairs of the company still the Statement of Affairs are filed by them showing the position of the assets of the company in liquidation as on the date of the winding up order. It is further submitted that it is not possible for them to carry the matter further and they plead guilty for whatever the defects in the Statement of Affairs. It is required to be noted that the accused Nos.2 to 4 filed the Statement of Affairs on 21.4.2003, however, as per the Official Liquidator, there are defects and the said Statement of Affairs are defective. Learned advocate Shri Karia appearing for the accused Nos.2 to 4 has also assured the Court that as and when the assistance of the accused Nos.2 to 4 is required by the Official Liquidator in future, they will fully co-operate the Official Liquidator and even otherwise, as per Section 457 of the Companies Act, accused being ex-directors, are bound to assist the

Official Liquidator. Considering the facts that when the accused Nos.2 to 4 have pleaded guilty for filing defective Statement of Affairs and in the peculiar facts and circumstances of the case and considering the facts stated above as well as stated in the reply and considering the submissions made on behalf of the accused Nos.2 to 4 that the accused Nos.2 to 4 have pleaded guilty, the accused Nos.2 to 4 are held guilty for non-compliance of the provisions of Section 454 of the Companies Act and only penalty is imposed upon them, which is quantified at Rs.20,000/-, which the accused Nos.2 to 4 are directed to deposit with the Registry of this Court within a period of three weeks from today.

7. With these, the present criminal case is disposed of.

[ M.R.Shah, J. ]

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